

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RICHARD BAYS,

Petitioner,

-v-

WARDEN, Ohio State Penitentiary,

Respondent.

Case No. C-3:08-cv-076

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

**ENTRY AND ORDER OVERRULING BAYS' OBJECTIONS (Doc. #139)
TO THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS; OVERRULING BAYS OBJECTIONS (Doc. #146)
TO THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND
RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS (Doc. #137) AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. #145) IN
THEIR ENTIRETY AND GRANTING BAYS A CERTIFICATE OF
APPEALABILITY ON HIS FIFTH GROUND FOR RELIEF ONLY**

This matter comes before the Court pursuant to Petitioner Richard Bays' ("Bays") Objections (doc. #139) to Magistrate Judge Michael R. Merz's Report and Recommendations (doc. #137) and Bays' Objections (doc. #146) to Magistrate Judge Merz's Supplemental Report and Recommendations (doc. #145). The Magistrate Judge recommends that Bays be granted a Certificate of Appealability on his Fifth Ground for Relief and otherwise denied a Certificate of Appealability.

The Warden responded to Bays' Objections to the initial Report and Recommendations (doc. #140), and to Bays' Objections to the Supplemental Report and Recommendations (doc. #147). Therefore, both of Bays' Objections are ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the

District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Bays' Objections to the Magistrate Judge's Report and Recommendations and Bays' Objections to the Magistrate Judge's Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are adopted in their entirety.

Bays' Motion for a Certificate of Appealability (doc. #128) is granted in part and denied in part. Bays is granted a Certificate of Appealability on his Fifth Ground for Relief. Otherwise, Bay's request for a Certificate of Appealability is denied.

DONE and **ORDERED** in Dayton, Ohio, this Twenty-Ninth Day of January, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record